

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

S.E.B.M., a minor, by and through her next friend,
MARIA MENDEZ FELIPE,

Plaintiff,

No. 21-cv-00095-JHR-LF

v.

THE UNITED STATES OF AMERICA,

Defendant.

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
NOTICE OF SUPPLEMENTAL AUTHORITY (DOC. 59)**

Pursuant to D.N.M.LR-Civ. 7.8(c), Defendant responds to Plaintiff's Notice of Supplemental Authority (Doc. 59), which called the Court's attention to the nonbinding decision in *A.E.S.E. v. United States*.

A.E.S.E. is factually distinguishable from this case in several key respects. First, *A.E.S.E.* involves allegations of poor detention conditions such as crowded, cold, and unhygienic facilities, *see* Doc. 59-1 at 19-20, which Plaintiff does not allege here.

Second, the plaintiffs in *A.E.S.E.* alleged that the Government made *no* effort to place the minor child with her grandparents, *see id.* at 24, whereas here, Plaintiff concedes that the Government did make efforts to place her with her grandmother, *see* Doc. 1 ¶¶ 92, 94.

Third, the Government's argument in *A.E.S.E.* regarding the private person analog was limited to an argument that only the federal government can enforce immigration laws and was limited to the IIED claim, to which Texas law applied. *See* Doc. 59-1 at 27 & n.8. Here, the Government's Motion to Dismiss analyzed both the IIED and negligence claim under state law. *See* Doc. 16 at 11-14; *see also* Doc. 45 at 12-13. Because Plaintiff agrees that New Mexico law

governs the IIED claim, *see* Doc. 41 at 19-20, *A.E.S.E.*'s analysis of the IIED claim under Texas law, *see* Doc. 59-1 at 28, is inapposite.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2022, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Christine H. Lyman 9/26/22
CHRISTINE H. LYMAN
Assistant United States Attorney